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February 22, 1988

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Via Federal Express

Hugh Barroll, Esquire
U.S. Environmental Protection Agency
Region IX
215 Fremont Street
San Francisco, California 94510

Dear Hugh:

We have attempted to revise the draft Consent Decree to reflect the discussions during our meetings on February 2-3, 1988, and I am enclosing a copy of this revised draft for your review. Copies of this letter and the revised draft also have been forwarded to the other participants, identified below.

We continue to follow the formatting scheme that has existed with other drafts, although we are focusing only on the two-party Consent Decree in this revised draft. Thus, bold language is offered as Goodyear proposed text and slashed wording is offered as EPA proposed text. In order to identify language we discussed on February 3, however, we have underlined the draft text as we understood it to reflect our discussions at those meetings. (Regrettably, everyone left before this draft text could be distributed.) In certain cases, Goodyear is proposing additional language to this text which is underlined but in bold print, and I will explain the reasons for that in this letter.

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Paragraph IV., "Definitions"

We have inserted an additional Paragraph IV in the text that would become the "definitions" section, and have included the terms previously discussed for this section. The original Paragraph IV, "Site Background" continues to remain in the draft because I do not feel that we have had sufficient discussion on this subject as yet.

Paragraph VI., "Obligations For The Work"

As you are aware, we had considerable discussion during the February 2-3, 1988, meeting over Goodyear's consultant's concerns with regard to the adequacy of the remedy and a greater concern as to whether the conditions at the site may be exacerbated if the remedy were implemented. We discussed a number of provisions that would assist Goodyear considerably in alleviating its concern over this possibility, including modifications or termination of the work, which I will discuss below. Goodyear also proposes, however, that there be a modification to Paragraph VI, "Obligations For The Work" of the Consent Decree to reflect its liability for the actual operation of this pumping, treatment and re-injection system. Specifically, we are proposing alternative language for Subparagraph B. of this section which would recognize Goodyear's liability only after routine operations of the Work commence. Prior to that time, Goodyear would like to discuss the willingness of the United States to assume this liability. [This would include the "shakedown" period of up to two years.] EPA apparently has the same issue under consideration as the Multa Rockets Fuel NPL facility in Albany, New York.

We have deleted our suggested language that the design of the work be in accordance with any forthcoming policy and guidance documents from EPA headquarters, but in Paragraph VI. C., we have proposed additional language to define the requirement that the work be performed in accordance with the NCP.

With respect to the potential EPA "takeover" of the work, we have proposed in this draft that takeover only be possible if there is evidence that Goodyear will not complete timely or adequately the final design, the construction, or the commencement of routine operations.

We also are proposing in the revised draft to increase the "work assumption penalty" from \$50,000.00 to \$75,000.00, but are proposing additional provisions relating to this subject. First, the advance notice to Goodyear's project coordinator of this potential would be increased from 10 days to 15 days. Second, during that 15 day period, EPA and Goodyear would

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attempt to resolve the issues of concern based on language that has been included in the draft. Third, the period of time for which Goodyear would be subject to stipulated penalties would be 45 days, in lieu of 60 days as you have proposed. Fourth, reference to interest at specified rates running from the date of receipt of EPA's notice would be deleted. Finally, we have also included draft proposed language associated with this proposal that would allow EPA to forgive a minimum of fifty percent of the "work assumption penalty" if Goodyear is able to achieve the requirements to complete construction of the work within the time specified in Paragraph VII.

Goodyear proposes to modify the language in Paragraph VI. F. dealing with ARAR's. The current text requires Goodyear to meet ARAR's "as identified by EPA." Goodyear has provided alternative language that would define ARAR's as "provided in Section 121(d) of CERCLA."

Paragraph VII., "Work To Be Performed"

We have attempted to capture the discussions that we had on this section, although we may not have succeeded in achieving that. Several points are noted, however. First, we continue to struggle with the way in which to propose measurement of treatment plant discharges on a monthly basis, and are currently considering a median concept. We will discuss this further with you in our meetings on February 24-25, 1988. Second, we have attempted to utilize much of your draft language with respect to the schedule but have incorporated the agreement reached in our outline with respect to when this project would terminate. Third, we have incorporated the maximum two year shakedown concept before routine operations begin.

Paragraph XII., "Site Access"

We have been in discussions with David Sweet of Loral concerning the site access issue, and have transmitted a draft side bar agreement to him for his consideration. Given our discussions over the last several weeks, it may be appropriate to consider deleting the language on the seventh line of subparagraph A of this section beginning with the words "within sixty calendar days" to the end of that sentence, as site access will be required long before the sixty days in which this Consent Decree is entered. We have, therefore, bracketed that language for discussion. In addition, we have included the language that was discussed at the end of our meeting on February 3, 1988, concerning placing some requirements on personnel for entry onto the property. Again, this language is included for purposes of further discussion at our meeting.

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Paragraph XIII., "Assurance Of Ability To Complete Work"

We have modified the opening paragraph of this section to require Goodyear to submit it's financial assurance documents to EPA within thirty calendar days after April 1, 1988, rather than the "effective date or entry" of the Consent Decree. Second, we have inserted alternative language to provide criteria that EPA must adhere to in making a determination that Goodyear's financial assurances are inadequate. These criteria generally follow the same sort of policies in the RCRA Financial Assurance Program.

Paragraph XIV., "Site Account"

We have adopted the language concerning the requirement that Goodyear maintain a segregated account dedicated to funding its obligations and to submit a quarterly statement concerning this account to EPA. In addition, we have deleted from the text any reference to the alternative "trust fund" that occurred in previous drafts.

Paragraph XXI., "Stipulated Penalties"

We have proposed a number of revisions concerning the stipulated penalties portion of the draft Consent Decree that include a tiered approach for various events that may trigger stipulated penalties. We also have proposed for purposes of discussion a mechanism by which the stipulated penalties would be based on a median monthly measurement basis. We have attempted to incorporate in this section all of the various pieces of stipulated penalties discussed in our February 3, 1988 outline. I continue to have discussions with Goodyear regarding the amount of the stipulated penalties, and will propose different amounts at our meeting on Thursday.

Paragraph XXII., "Dispute Resolution"

We have attempted to incorporate the brief discussions on changes to this section, including reference to ADR mechanisms and our decision to incorporate reference to Section 113(j) of SARA. Further discussion on this paragraph still appears to be in order, however.

Paragraph XXIII., "Force Majeure"

Reflecting on our discussions at our last meeting, we have included additional suggested language for discussion in this section associated with Goodyear's concerns over the possible technical impracticability of the remedy or the potential for exacerbating risks. We also would like to discuss another

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force majeure event associated with the unanticipated breakage or accident to the equipment associated with the work. These additions have been incorporated into the text in bold language.

Paragraph XXV., "Modification"

We have provided suggested revisions to this paragraph which are all presented in bold faced language.

Paragraph XXXI., "Termination and Satisfaction"

We have provided suggested revisions to this paragraph, again presented in bold face language, to incorporate the substance of our discussions as reflected on the February 3, 1988 outline.

I hope this draft meets with the understandings that we had discussed and reached on February 3rd. I apologize for any errors that may have crept in, but they can be addressed and corrected when we meet. Wally and I look forward to seeing you on Thursday.

Sincerely yours,

Lisa Marie Martin for

William N. Hedeman, Jr.

WNH/emh
0584g
Enclosure

copy w/encl:

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